

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES MONROE,	§	
	§	No. 271, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0405005159
Appellee.	§	

Submitted: October 17, 2008

Decided: January 16, 2009

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 16th day of January 2009, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Charles Monroe, filed this appeal from the Superior Court’s denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). We find no merit to Monroe’s appeal. Accordingly, we affirm the judgment of the Superior Court for the reasons stated by the Superior Court in its decision dated May 19, 2008.

(2) In June 2004, a grand jury indicted Monroe on numerous weapons and traffic-related charges as well as charges of third degree assault

and offensive touching. At a hearing held the day before the start of the two-day jury trial, the Superior Court granted Monroe's motion to proceed *pro se*.¹ The jury convicted Monroe of all charges except third degree assault. Thereafter, the Superior Court granted the prosecution's motion to declare Monroe a habitual offender and sentenced him to a total of twelve years imprisonment suspended after nine years for probation.

(3) Monroe initially proceeded *pro se* on direct appeal and filed *pro se* opening and reply briefs. By order dated October 18, 2005, this Court remanded the case to the Superior Court for an evidentiary hearing regarding the waiver of Monroe's right to appellate counsel.

(4) After the case was returned from remand, the Court appointed counsel to represent Monroe on appeal. Through counsel, Monroe again participated in full briefing, followed by oral argument and supplemental briefing. By order dated December 4, 2006, the Court affirmed Monroe's convictions and sentence.²

(5) In November 2007, Monroe filed a motion for postconviction relief pursuant to Rule 61. Monroe alleged that he had been denied his right to counsel at trial and that his counsel on direct appeal was ineffective.

¹ The Superior Court also denied Monroe's *pro se* motion to suppress.

² *Monroe v. State*, 2006 WL 3482182 (Del. Supr.).

Monroe also alleged that the Superior Court erred when admitting a back brace into evidence, giving a unanimity jury instruction, sentencing him as a habitual offender, and denying him the preparation of transcript. The Superior Court directed that the State, and Monroe's former defense counsel, each file a response to the postconviction motion. Monroe then filed a reply brief.

(6) By order dated May 19, 2008, the Superior Court denied Monroe's postconviction motion.³ The Superior Court concluded that Monroe's ineffective assistance of counsel claim was without merit, and that his claim related to transcript was procedurally barred pursuant to Rule 61(i)(4).⁴ The Court concluded that Monroe's remaining claims, *i.e.*, those related to the deprivation of trial counsel, the admission into evidence of the back brace, the jury instruction, and his sentencing as a habitual offender, were procedurally barred pursuant to Rule 61(i)(3).⁵ This appeal followed.

³ *State v. Monroe*, 2008 WL 2210623 (Del. Super.).

⁴ *See* Del. Super. Ct. Crim. R. 61(i)(4) (providing in pertinent part that "[a]ny ground for relief that was formerly adjudicated . . . is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice").

⁵ *See* Del. Super Ct. Crim. R. 61(i)(3) (providing that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred unless the petitioner can establish cause for the procedural default and prejudice from a violation of the petitioner's rights).

(7) On appeal, Monroe argues that the Superior Court erred when applying the Rule 61 procedural bars to his claims. We review the Superior Court's denial of postconviction relief for an abuse of discretion.⁶

(8) Monroe did not raise his claims concerning the denial of trial counsel, the back brace, the erroneous jury instruction and his sentencing as a habitual offender, on direct appeal. As a result, as was determined by the Superior Court, each of those claims is procedurally barred pursuant to Rule 61(i)(3), unless Monroe can demonstrate cause for his failure to raise the claim on direct appeal and prejudice from the alleged violation of his rights.⁷ Monroe has demonstrated neither cause nor prejudice for having failed to raise the claims on direct appeal.⁸ The Superior Court properly denied the claims as procedurally defaulted without exception.

(9) Monroe alleges that his appellate counsel was ineffective for failing to raise each of the aforementioned claims on direct appeal. After ruling that the underlying claims themselves lacked merit, however, the Superior Court correctly found that counsel had not been ineffective in failing to raise the claims on appeal. Monroe failed to either show that

⁶ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

⁷ Del. Super. Ct. Crim. R. 61(i)(3).

⁸ Although Monroe argues that he raised one or more of his postconviction claims in his *pro se* opening and/or reply briefs filed on direct appeal, those briefs were replaced on appeal by the briefs filed by his appellate counsel. Once counsel was appointed, Monroe's presentation to the Court rested exclusively with his counsel. *In re Haskins*, 551 A.2d 65, 66-67 (Del. 1988).

“counsel’s representation fell below ‘an objective standard of reasonableness,’ and that counsel’s actions were prejudicial.”⁹

(10) Finally, Monroe’s claim that he was denied a fair trial because he was denied the use of a transcript to cross-examine a witness, was considered and rejected on direct appeal.¹⁰ Monroe has not demonstrated that the claim should be reconsidered in the interest of justice.¹¹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ *Skinner v. State*, 607 A.2d 1170, 1172-73 (Del. 1992) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

¹⁰ *See Monroe v. State*, 2006 WL 3482182, at *2 (Del. Supr.).

¹¹ Del. Super. Ct. R. 61(i)(4).